

**ORDINANCE No. 24-002**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MANHATTAN, MONTANA ADDING TITLE 7, SECTION 12 OF THE MANHATTAN MUNICIPAL CODE, TO PROHIBIT CAMPING ON RIGHT OF WAYS IN TOWN, AND TO PROVIDE FOR REMOVAL OF SUCH CAMPS OR CAMPERS**

**WHEREAS**, the Town Council of the Town of Manhattan believes that revising the Town’s public ways and property as set out on the attached Exhibit A, is in the interests of the health and safety of the citizens of the Town; and

**WHEREAS**, the Town Council finds that camping on public right of ways, streets, sidewalks, and public grounds are detrimental to the use, enjoyment, and value of property within the Town and creates a safety issue with the use of the streets, sidewalks, public grounds and rights of way for the citizens and for the campers; and;

**WHEREAS**, pursuant to §7-14-4101, MCA, the Town has the authority to prevent the encumbering of streets, sidewalks, alleys or public grounds with obstacles or materials and to provide for the safety of persons using such property; and

**WHEREAS**, the United States Supreme Court has long recognized that a municipality has the right to regulate the use of Town streets to assure the safety and convenience of the people in their use, and further, that governmental authorities have the duty and responsibility to keep their streets open and available for movement (*Cox v. Louisiana*, 379 U.S. 536 (1965)); and

**WHEREAS**, in 2019, the United States Ninth Circuit Court of Appeals (Ninth Circuit) issued its decision in *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019), holding in part that the Cruel and Unusual Punishments Clause of the Eighth Amendment “prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter;” and

**WHEREAS**, in 2022, the Ninth Circuit issued its decision in *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), holding local ordinances violated the Eighth Amendment to the extent the ordinances prohibited individuals from taking minimal measures to keep warm and dry while sleeping (including sleeping in vehicles); and

**WHEREAS**, the intent of this ordinance is to limit the effect camping on a public right of way has on the citizens of the Town, including aesthetics on adjacent landowners, citizens, and visitors and to provide for the safety of such persons within the Town of Manhattan; and;

**WHEREAS**, the Manhattan City-County Planning Board held a public hearing regarding the proposed changes on November 15, 2023 at which time the Board recommended adoption of the amendment; and;

**WHEREAS**, the Manhattan Town Council held a public hearing regarding the proposed changes on 15<sup>th</sup> day of February, 2024;

**WHEREAS**, based upon the information presented at the public hearing, the recommendation from the Planning Board, advice from the Town Attorney, and the recommendation from the Town's Planning Consultant, the Town Council voted to approve the addition, finding that the proposed addition set out on **Exhibit A** meets all necessary criteria.

**NOW THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Manhattan that the following addition be made to the Municipal Code of the Town of Manhattan, effectively adding provisions, and creating Title 7, Chapter 12 of the Manhattan Municipal Code as set out in Exhibit A, attached.

**REPEALER:** All ordinances and parts of ordinances in conflict with provisions of this ordinance, except as provided above, are hereby amended or repealed.

**EFFECTIVE DATE:** This ordinance shall be in full force and effect thirty (30) days after final adoption by the Town Council of the Town of Manhattan.

**SEVERABILITY:** If any portion of this ordinance or the application therefore to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this ordinance which may be given effect without the invalid provisions or application and, to this end, the provisions of this ordinance are declared to be severable.

PASSED BY the Town Council and approved by the Mayor of the Town of  
Manhattan, Montana, this 15<sup>th</sup> day of February 2024.

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Traig Howells, Mayor

ATTEST:

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Clerk/Treasurer

## EXHIBIT A TO ORDINANCE No. 24-002

That the Manhattan Municipal Code is amended as follows to add Chapter 12 to Title 7:

Chapter 12. Camping on Public Right-of-Way.

Sec 7-12-1 Definitions.

- A. The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
1. "Camping" or "camp" means to pitch, erect, create, inhabit, use, or occupy camp facilities in, or otherwise inhabit, the public right-of-way.
  2. "Camp facility" or "camp facilities" include but are not limited to tents, huts, temporary shelters, structures, vehicles as defined in 6-1-3, recreational vehicles with or without motive power designed for use as temporary living quarters or camping, motor homes, camping trailers, tent trailers, truck campers, camper vans, structures, or any other item used for the purpose of camping.
  3. "Involuntarily homeless" means a person that does not have the means to acquire their own shelter and who does not otherwise have access to shelter or transitional housing.
  4. "Public right-of-way" means all real property (including property owned in fee or obtained through easement or dedication) administered by the Town and which is used for transportation purposes, including streets, roads, bridges, alleys, sidewalks and boulevards, trails, paths, and other public ways.

Sec. 7-12-2 Camping in Public Right-of-Way is Prohibited.

- A. Camping on the public right-of-way within Town limits is prohibited, except as provided in subsections B and C of this section.
- B. A Town employee with authority to enforce this article must refer an individual who is involuntarily homeless who is camping on the public right-of-way to an available shelter facility or other available temporary housing. Individuals who are involuntarily homeless may only camp on the public right-of-way when a shelter facility or other temporary housing is not available.
- C. If space in a shelter facility or other temporary housing is not available, a person camping on the public right-of-way must comply with the following:
1. Time: No camping may occur in the same location on the public right-of-way for more than three (3) consecutive days. No camp facilities may be located or used for camping in the same location or on the same street on the public right-of-way for more than three (3) consecutive days. After three (3) consecutive days a written two (2) day notice of intent to remove the camp shall be placed on the camp. At the end of the two-day notice period the camp facility must be moved to a different named street.

2. A person who is involuntarily homeless may apply to the town council for written permission to exceed the length of time restrictions described above.
  3. Factors the town council may consider in granting permission include but are not limited to the location of the camp facilities, the person's employment status, site conditions, and the person's connections to social services and the community.
- D. Camping on the public right-of-way is prohibited, regardless of the availability of shelter space, in the following locations:
1. Adjacent to or immediately across from any parcel or lot containing a residential dwelling or zoned for residential use, including lots or parcels with multi-household dwellings;
  2. Within 150 feet of a public entrance of any commercial business or non-profit organization;
  3. Adjacent to or immediately across from the boundary of any public park;
  4. Adjacent to or immediately across from any parcel or lot containing any public or private school, including secondary, elementary, or preschool, or any lot or parcel containing a daycare;
  5. Any alleys.
  6. Any location in violation of any posted parking signs or painted curbs prohibiting parking or otherwise limiting the hours of parking;
  7. Within a bike lane, street median, sidewalk, or public pathway or trail.
- E. Regulations if Camping is allowed pursuant to 7-11-2(B):
1. All camp facilities and their immediate area must be maintained in a clean and orderly manner and must be located on a paved surface. A clean and orderly manner includes, but is not limited to, all waste, debris and trash must be in a container and personal items, when not actively being used, must be stored inside a camp facility.
  2. No waste, sewage, debris, trash, personal items, or additional vehicles or trailers may be discarded of or stored in the right of way.
  3. No fires are permitted within the public right-of-way. This includes items fueled by propane, such as outdoor heaters.
  4. Only generators rated not to exceed 60 decibels are permitted to be operated on the right-of-way. Generators must be stored and located on a paved surface. Fuel must be in containers designed for the fuel stored therein.
  5. Camping on the paved surface of any street in a tent, tarp, or in only sleeping bags, blankets, or other rudimentary forms of protection from the elements, is prohibited.
  8. No structures may be built or maintained on the public right-of-way pursuant to 7-1-3-4.

#### Sec. 7-12-3 Violations; penalties

A violation of 7-12-2 shall be a municipal infraction pursuant to Title 1 Chapter 4 of this Code subject to the following:

- A. Each violation of 7-12-2 shall be punishable by a civil penalty of One Hundred Dollars (\$100.00). Each day a violation occurs constitutes a separate offense.

- B. If unsanitary conditions exist, the Town may abate or cause to be abated any waste, debris, trash, structure, tent, property, or item in the public right-of-way by conspicuously posting a 72-hour notice of abatement. After the 72-hour notice period, any property remaining will be considered abandoned and subject to disposal. No notice is required to abate a condition impeding traffic or when the condition poses an imminent risk to public health or safety.
- C. The Town may remove or cause to be removed any camp facility in violation of 7-12-2-C and D after posting a notice on or near the camp facility for 48 hours prior to removal. No notice is required if the camp facility is impeding traffic or poses an imminent risk to public health or safety.
- D. In the event a camp facility belonging to an involuntarily homeless person is towed or impounded by the Town, the vehicle owner will be responsible for all fees associated with the towing or impoundment.
- E. This Article may be enforced by any Town law enforcement officer, code enforcement officer, parking enforcement officer or other employee upon written designation by the town council. Determinations regarding abatement or emergency removal without notice shall be made by the police chief or their designee.